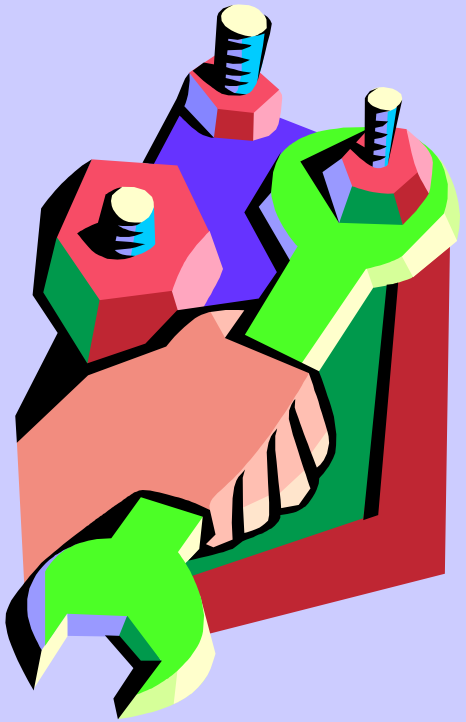
What is a “Properly Filed” or “Perfected” Request?

A “Nuts and Bolts” Session for

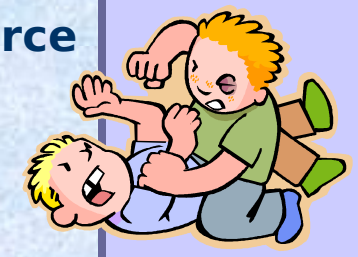
Freedom of Information Act Officers



“Properly Filed” - What’s all the Fuss?”

- **Everybody has a Duty**
  - Requesters have a duty to follow our published FOIA rules.
  - You have a duty to act promptly on all requests.

- **Clarification, Please!**
  - Before launching a search, you must know:
    - What am I looking for?
    - How fast do I have to find it?
    - Will I be billing, and, if so, what services will I charge for?
    - Has the requester agreed to pay fees?
  - Failure to resolve problems at the onset can be a source of conflict, cause delays, and result in an appeal.



- **We’re All in Agreement!**
  - With good communication, your requester will know what he is being billed for, the maximum amount you will bill. The goal is to avoid surprises for you and your requester.

“PROPERLY FILED” MEANS . . .

- ✓ You have a good description of the records requested.
- ✓ You and the requester are in agreement as to his category.
- ✓ Requester has provided a fee statement.
- ✓ Fee waiver request has been justified.
- ✓ Requester does not owe for a previous request.
- ✓ Expedited treatment request has been justified.
- ✓ You have a proper return addr
- ✓ You have verified the reques y for any first-party request.

Checkpoint 1
Do you Have a Good Description of the Records?

- **Testing the Description - 2-Step Process:**
  - **Preliminary Test: Does the description appear adequate to you? If so, the search process may begin.**
  - **Acid Test: Is the description sufficient for the searching office? That office may need to return the request to you if they need additional data to conduct the search.**

- **Description Standard – The description must be sufficient to enable a professional employee familiar with the subject area to locate the record with a "reasonable amount of effort."**

A voluminous request does not mean it is poorly described!

Checkpoint 1 - Rx for Faulty Descriptions
Ask Requester to Provide:

- **File Related Details**
  - What type of record is it? (contract, report, memo, etc.)
    - What is the topic of the record? (Project Nomad, facility inspection)
    - Who originated it? (office, person, agency)
    - When was it created? (Date or general time frame)
- **Event Related Details**
  - What events caused the record t[illegible]d?
- **Any Other Details Needed To –**
  - Identify the office to be searched
  - Find the records

Checkpoint 2
Are you and Requester in Agreement on his Category?

Why Categorize?

A requester's category determines how you will bill him. One category pays for copying only; another category pays for search and copying; another category pays for search, review, and duplication. Your category determination must agree with requester's self-placement.

What if the Requester Does Not Specify his Category?

Not a problem if fees will not be assessed or if requester agrees to pay all billable charges. However, if requester limits the services he agrees to pay for (e.g., copying only), you must ensure that he falls within the copying-only category.

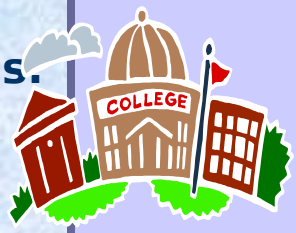
What are the Different Categories?

- Educational, Scientific, and News Media (Most Preferred Category)
- Commercial (Least Preferred Category)
- All Others

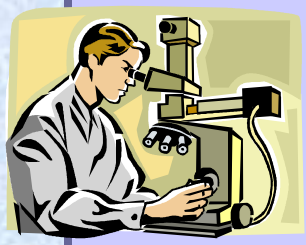
Checkpoint 2 - Category Description: Educational/Scientific/Media Users

- **Educational**
  - Universities and public and private schools at all levels.

Students normally fall under "All Other."



- **Noncommercial Scientific**
  - Entity operated solely for conducting scientific research.
  - Entity does not intend to promote one industry over another.



- **Media**
  - Entity that actively gathers news for general public dissemination.
  - "News" – current events or of potential public interest.
  - Newspapers, TV/radio stations, freelance journalists, authors.

- **Attorneys Representing These Entities**

Checkpoint 2 - Category Description: Commercial Users

- Businesses & Commercial Enterprises
- Data Brokers, Information Marketers
- Attorneys Representing these Entities

Checkpoint 2 - Category Description: All Other Users

- **Individuals who fit in no other category.**
- **Individuals acting in a personal, not commercial, capacity.**
  - **Examples: The general public, employees, students, employee unions.**
- **Attorneys Representing These Individuals**

Checkpoint 2
Tip Sheet - Determining Requester Category

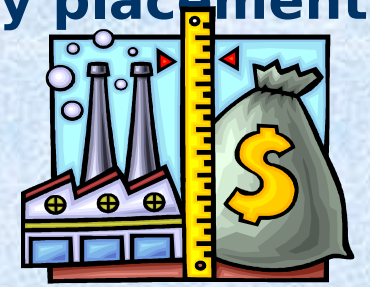
- **Examine these Factors both Individually and as a Whole:**
  - **The requester's self-placement statement.**
  - **The letterhead used.**
    - **A request may be handwritten on lined tablet paper and still qualify as media or commercial!**
  - **The stated purpose in making the request.**

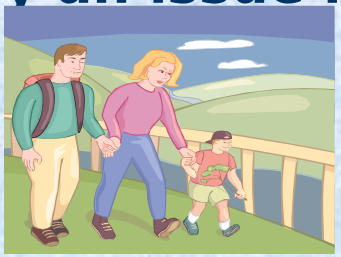
Never ask a requester why he filed a request unless fees and/or category placement are an issue!

  - **The type of record requested.**
    - **Would the record further the commercial, trade, or profit interest of the reque**

Checkpoint 2
Rx for Requester Category Disagreements

- If a requester asks to be placed in a non-commercial category and you disagree, ask for details.
  - What is his purpose in making the request?
  - How will he use the data?
  - What are his media, scientific, or educational credentials?
- After evaluating the requester's statement, tell him what category you assigned the request to and why. If you decision is adverse, provide the right of appeal.
- Remember - Category placement is only an issue if fees will accrue!





Checkpoint 3
Do you have a Fee Statement?

Requester must state a willingness to pay fees for his category. However, no statement is needed if you believe the cost to fill the request will be $15 or less. In those cases, fees are automatically waived.

- **Media/Scientific/Educational Users:**
  - **Must agree to pay for copying.**
  - **Agency must provide the first 100 pages without charge.**
- **Commercial:**
  - **Must agree to pay for all search, all review, and all duplication.**
- **All Others:**
  - **Must agree to pay for search and copying.**
  - **Agency must provide the first 2 hours of search and the first 100 pages without charge.**

Checkpoint 3
Rx for Faulty Fee Statements

- If fees are not addressed, ask how much requester is willing to pay.
  - Tell requester what category you have assigned and what areas you will be charging for (search, review, etc.)
  - If requester asks for an estimate, be prepared to give one.
- Ask the searching office to notify you if fe exceed the requester's preset limit.

Checkpoint 3 - Rx for Tricky Fee Statements

Q: My requester is a commercial user and agrees to p for all copying. Is that sufficient?

A: No. You will be billing for search and review, too. Since he has not agreed to pay for search and review, he will be under no obligation to reimburse you for those costs.

Q: My requester asks for a fee waiver but adds that he will pay all fees if the waiver is refused. Is this sufficient?

A: No. First give him an opportunity to justify his waiver (see Checkpoint 4). Resolve the waiver issue first!

Q. My requester agrees to pay all search, review, and copying, but he qualifies as an "all other" user. Do I charge him at the commercial rate based on his statement?

A: No. Charge as "all other." In your final response, tell him why you only charged for search above 2 hours and copying above 100 pages.

Checkpoint 4
Do You Have a Justification for Fee Waiver?

- In some circumstances, you may grant a full or partial fee waivers when requested.
- Waivers are decided on a case-by-case basis.
- The general public must be the primary beneficiary.
- The Requester must give you sufficient details to allow you to judge the merits of waiver.

TIP: Indigence is not a basis for waiver!

- Requester's justification for waiver must specifically address the 5 questions on the next chart.

Checkpoint 4
Rx for Faulty Waiver Requests

- **Ask the requester to justify his request by addressing each of the 5 areas below. The justification must show –**

  (1) How the records concern operations or activities of the government.

  (2) How the disclosable portions are meaningful informative on government operations.

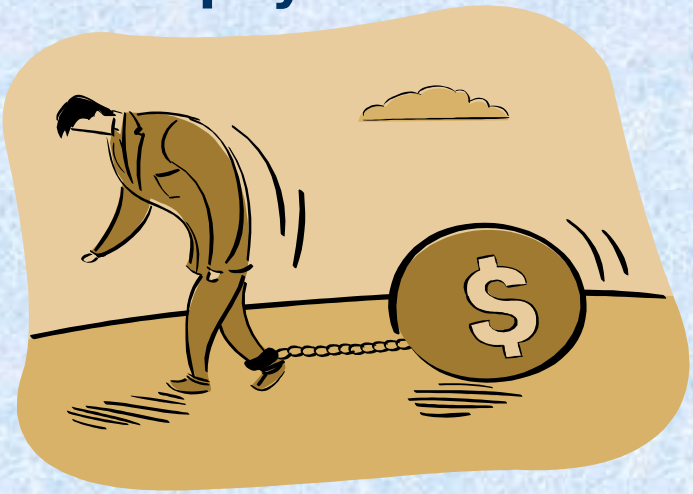
  (3) How disclosure will contribute to the understanding of the public at large, as oppose to the requester or a narrow segment of persons

  (4) How disclosure will contribute significantly to public understanding of government operations or activities.

  (5) What his commercial interests are in disclosure and how he will actively disseminate the information to the general public.

Checkpoint 5
Does Requester Owe for a Previous Request?

- **For Requesters in Arrears:**
  - **Demand payment of the debt along with any accrued interest.**
  - **Advise that the current request will not be processed until the debt is settled.**
  - **Ask for advance payment for the current request.**



Checkpoint 6
Do you have Justification for Expedited (10-day) Treatment?

- **Requester Must Show "Compelling Need"**
  - Imminent threat to life or physical safety.
  - Urgently needed to inform the public of alleged government activity.
    - Requester must be primarily engaged in publicly disseminating data (i.e., news media)
    - Must show that news value will be lost by delay.
  - Does not include
    - Records of historical interest.
    - Data sought for litigation or commercial interests.

- **Other Reasons**
  - Loss of due process rights or humanitarian need.
  - Process behind "compelling need" requests.

Checkpoint 7
Do you Have a Proper Return Address?

- **Some Requesters Provide Only an E-Mail Address. You may need a ground address if –**
  - **The records can't be produced electronically.**
  - **You will be relaying personal data to a first-party requester. Since E-mail travels though the open Internet, it is subject to interception. You therefore may want to consider using ground mail.**
- **If you will need a street address, do not delay processing. Instead, ask the requester to supply a ground address while the search is underway.**

Checkpoint 7
Do you Have a Proper Return Address?

Requests from Federal Employees

- Federal employees are not authorized to file requests using
  - Federal agency letterhead.
  - Federal postage.

While Federal employees may invoke the FOIA in their capacity as individuals, the Federal government may not. Official requests for data needed to perform an agency function must be sent through proper channels, not FOIA.

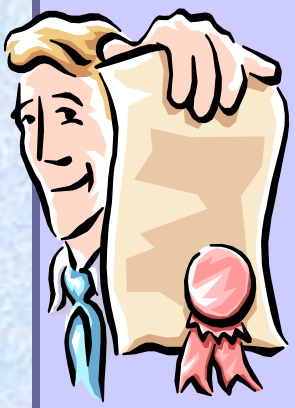
ployee must provide a personal address for your y.

Mail addressed to a Federal agency is considered official agency mail and may be treated as such. Since official may be opened by any authorized agency employee, home addresses or the PO Box of the requester should be used to forward documents and replies.

Checkpoint 8 - Verifying the Requester's Identity (First-Party Requests Only)

In some instances, you need assurance that an individual is who he says he is!

- **First-Party Request – Individual Asks for His Own File:**
  - **Ask requester to provide his choice of –**
    - **Having his request formally notarized by a Notary Public . . . OR . . .**
    - **Providing an Unsworn Identity Declaration Statement.**
- **An Individual's Agent, Attorney, or Representative asks for his Client's File:**
  - **Ask the requester to provide a written authorization to disclose from the record subject.**



Checkpoint 8
The Unsworn Identity Declaration Statement

Format For Unsworn Identity Declaration Statement
Executed Within the United States & its Possessions

"I declare, under penalty of perjury that I am, in fact, Mary Leigh Carlson, SSN 222-33-4444, that I currently reside at 214 Maple Lane, Anytown, USA 55590, and that the statements made in my request are true and correct. Executed on [Date] [Signature]."

Format For Unsworn Identity Declaration Statement
Executed Outside the United States & its Possessions

"I declare, under penalty of perjury of the laws of the United States of America that I am, in fact, Reginald Smalley, that I currently reside at 214 Trafalgar Lane, London, SW11 6QL, England, and that the statements made in my request are true and correct. Executed on [Date] [Signature]."

NOTE!!

SSN may be omitted if you do not need it to locate the individual's file.

Checkpoint 8
Written Authorization to Disclose

Any format will do, but here's a suggestion:

I authorize _____to provide my security clearance file to my legal representative, Arthur Wellborn. Mr. Wellborn will be requesting my file sometime during the period July-September 2005.

Mary Leigh Carlson, SSN 222-33-4444

214 Maple Lane

Anytown, USA 55590

[Date] [Signature].

NOTE !!

SSN may be omitted if you do not need that to locate the individual's file.

For all “Imperfect” Requests . . .

- **Ask the requester to supply the missing data.**
- **Advise you will consider the request withdrawn if a response is not received within 30 calendar days.**
- **The 20 day clock begins on the date you receive a perfected request.**
- **Should you determine midway through processing that another imperfection is present, stop the clock until resolved.**

NOTE: To stop the clock, the imperfection must be on the requester’s part, not the agency’s.